

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOYCE ZEISS,)
Plaintiffs,)
v.) Case No. _____
CAPITAL ONE BANK, U.S.A, N.A.)
Defendant.)

)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant Capital One Bank (USA), N.A., incorrectly named as Capital One Bank, U.S.A., N.A. (“Capital One”) removes this case from the Court of Common Pleas of Luzerne County, Pennsylvania to the United States District Court for the Middle District of Pennsylvania. In support of this Notice of Removal, Capital One states as follows:

I. BACKGROUND

1. On or about October 1, 2019, plaintiff Joyce Zeiss (“Plaintiff”) initiated this action by filing a complaint (the “Complaint”) against Capital One in the Court of Common Pleas of Luzerne County, Pennsylvania, which was styled *Joyce Zeiss v. Capital One Bank, U.S.A., N.A.*, Civil Action No. 201912090 (the “State Court Action”).

2. Plaintiff served Plaintiff’s Complaint on Capital One on October 1, 2019. No other documents have been filed in the State Court Action. Pursuant to 28 U.S.C. § 1446(a), Capital One has attached true and correct copies of “all process, pleadings, and orders served” upon Capital One in the State Court Action as Exhibit A.

3. In the Complaint, Plaintiffs assert a claim under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.* Plaintiffs allege that Capital One made calls to Plaintiff’s cellular telephone in violation of the TCPA, and based thereon, raises a single cause of action for violation of the TCPA. *See* Compl. at ¶¶ 6-22.

II. BASIS FOR REMOVAL JURISDICTION

4. This Court has original jurisdiction under 28 U.S.C. § 1331 as Plaintiffs allege violation of a claim or right arising under the laws of the United States.

5. Specifically, Plaintiff alleges that Capital One made calls to Plaintiff’s cellular telephones in violation of the TCPA. *See generally* Compl.

6. Therefore, the Complaint alleges violations of a claim or right arising under the laws of the United States, and as such, this action is subject to removal pursuant to 28 U.S.C. §§ 1331 and 1441 at the request of Capital One.

III. VENUE

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and 1441(a), because the United States District Court for the Middle District of Pennsylvania is the federal court embracing the Court of Common Pleas of Luzerne County, Pennsylvania, where Plaintiff originally filed the State Court Action.

IV. PROCEDURAL COMPLIANCE

8. Plaintiff served Capital One with a copy of Plaintiff’s Complaint on October 1, 2019. *See* Ex. A.

9. This Notice is timely because it has been filed within the thirty day period prescribed by 28 U.S.C. § 1446(b).

10. The time for Capital One to answer, move, or otherwise plead in the State Court Action in response to the Complaint has not yet expired, and Capital One has not answered, moved, or otherwise responded to the Complaint.

11. The documents attached hereto as Exhibit A constitute all of the process, pleadings, and orders received by Capital One to date.

12. Written notice of the filing of this notice of removal is being forwarded to Plaintiff and to the Court of Common Pleas of Luzerne County, Pennsylvania, pursuant to 28 U.S.C. § 1446(d). *See* Notice of Filing Notice of Removal, attached hereto as Exhibit B.

13. By filing a Notice of Removal in this matter, Capital One does not waive its right to object to service of process, the sufficiency of process, jurisdiction over the person, or venue, and Capital One specifically reserves the right to assert any defenses and/or objections to which it may be entitled.

14. Without conceding the availability of any particular remedy or category of damages, this action involves a controversy arising under the laws of the United States, as appears from the allegations of Plaintiff's Complaint. Accordingly, this action is one over which this District Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331, and this matter may be removed to this Court under 28 U.S.C. § 1441.

WHEREFORE, notice is given that this action is removed from the Court of Common Pleas of Luzerne County, Pennsylvania, to the United States District Court for the Middle District of Pennsylvania.

Dated: October 21, 2019

Respectfully submitted,

By: /s/ Daniel JT McKenna
Daniel JT McKenna, Esquire (Pa. ID 93930)
BALLARD SPAHR LLP
1735 Market Street, 51st Floor

Philadelphia, PA 19103-7599
Telephone: (215) 864-8321
Facsimile: (215) 864-8999
mckennad@ballardspahr.com

Attorneys for Defendant Capital One Bank (USA), N.A.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the October 21, 2019, a true and correct copy of Defendant Capital One Bank (USA), N.A.'s, Notice of Removal and accompanying Exhibits were served via e-mail upon the following:

Brett Freeman
SABATINI FREEMAN, LLC
216 N. Blakely St.
Dunmore, PA 18512
Phone: (570) 341-9000
brett@sabatinilawfirm.com

By: /s/ Daniel JT McKenna
Daniel JT McKenna

Dated: October 21, 2019